Alberta Energy Regulator

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Proceeding 432

September 25, 2023

By e-mail only

Brookfield Residential (Alberta) LP
C/O: McLennan Ross LLP
Attention: Evan W. Dixon and
Marika Cherkawsky

RE: Reconsideration of the Alberta Energy Regulator's Decision, Dated April 20, 2022
Amended Application No.: 1932335 dated January 14, 2022
Qualico Developments West Ltd.
Reconsideration No.: 1940992
Decision on Participation of Brookfield Residential (Alberta) LP (Brookfield)

Dear: Evan W. Dixon and Marika Cherkawsky:

I am writing on behalf of the Alberta Energy Regulator (AER) panel of hearing commissioners presiding over proceeding 432 (the panel). The panel has decided to permit Brookfield to fully participate in the hearing of the application. Full participation in the hearing includes filing written submissions according to the schedule to be set by the panel, speaking to those submissions at the hearing, being questioned by the panel and parties that are adverse in interest to Brookfield, cross-examining parties adverse in interest to Brookfield, and submitting final argument.

On July 13, 2023, the AER issued a notice of hearing to reconsider its April 20, 2022, decision on amended application no. 1932335 brought by Qualico Developments West Ltd. (Qualico).

On July 21, 2023, Qualico requested an extension to the deadline for submitting requests to participate. On July 26, 2023, AER amended the notice of hearing and set a filing deadline of August 10, 2023, for requests to participate, and August 17, 2023, for responses to requests to participate.

Qualico, Pembina Pipeline Corporation (Pembina) and Plains Midstream Canada ULC (Plains) were noted as parties to the hearing and asked to confirm their intention to participate in the hearing. On August 10, 2023, Qualico, Pembina, and Plains confirmed their intention to fully participate in the hearing.

On August 10, 2023, the AER received Brookfield's letter requesting to participate in the hearing. Brookfield did not file a statement of concern (SOC) at the time of the original application, it stated that it was then in the negotiation of pipeline relocation and crossing agreements with another pipeline company in Edmonton and felt a SOC might jeopardize those negotiations. Brookfield stated that it is a landowner of future development lands in Edmonton, as well as other locations in Alberta, and it will be directly affected by the outcome of the hearing as Brookfield regularly deals with pipeline facilities during its land development operations. Brookfield said it has "direct and relevant experience" that may be of value in the hearing. Brookfield identified section 33 of the *Pipeline Act* as important for developers as a mechanism for resolving disputes with pipeline companies when negotiations are unsuccessful. Brookfield stated the decision being reconsidered in this hearing has created uncertainty that has led to negative consequences for developers, including a lack of clarity and predictable processes for interactions between pipeline companies and developers.

Brookfield requested to fully participate in the hearing as it has a vested interest in the outcome, and it has faced similar difficulties as Qualico in negotiations with pipeline companies. Brookfield stated it would be directly and potentially adversely affected by any decision in this proceeding, and in the alternative, asked the AER to consider granting them full participation rights under section 9(2)(c) of the AER *Rules of Practice* (Rules) as: Brookfield's participation would materially assist the panel in deciding the matter; Brookfield has a tangible and substantial interest in the matter; its participation will not delay the proceeding; and they undertake to ensure they do not duplicate submissions of other parties. Brookfield supports the outcome requested by Qualico in its amended application.

Qualico did not provide a reply to Brookfield 's request to participate in the hearing. Pembina and Plains provided replies to the requests to participate, on August 17, 2023, and both stated that they took no position with respect to the filed requests to participate.

Section 34(3) of the *Responsible Energy Development Act* states that: "... a person who may be directly and adversely affected by the application is entitled to be heard at the hearing". In addition, the Rules give the hearing panel discretion to permit participation of persons who have a tangible interest and whose participation will materially assist without materially delaying the proceedings or repeating or duplicating evidence. The participation provisions in the Rules are intended to ensure a fair and efficient process and the development of a complete record that enables the panel to carry out its mandate.

In the panel's view, Brookfield has demonstrated that it has a tangible interest in this matter and has relevant information and expertise with Edmonton land development projects that may assist the panel in fulfilling its mandate and in deciding this application. Brookfield has been a party to similar negotiations with pipeline companies regarding relocation and crossings. Furthermore, the panel notes that the parties to this proceeding did not object to Brookfield's application to participate. For these reasons and subject to further directions or rulings issued by the panel, the panel permits Brookfield's full participation in the hearing and appreciates its intent not to delay the hearing or duplicate evidence.

If you have any questions, please contact the undersigned at hearing.services@aer.ca.

Sincerely,

Elaine Arruda
Hearing Coordinator

cc: D. Brezina and A. Huxley, AER Panel Counsel
G. Fitch, McLennan Ross LLP (Qualico Developments West Ltd.)
S. Munro, Bennett Jones LLP (Pembina Pipeline Corporation)
D. Naffin, Bennett Jones LLP (Plains Midstream Canada ULC)
S. Fash, BILD Alberta
C. Nicholas, MLC Group Inc.
J. Marchese and P. Shaver, Avillia Developments Ltd.
K. Rowe, Cantiro Group LP
K. Anderson, Urban Development Institute – Edmonton Metro
S. Duncanson, Osler, Hoskin & Harcourt LLP (Keyera Corporation)
I. Radzichowsky and K. Welland, Secure Energy Services Inc.
M. Davis, Melcor Developments Ltd.
S. Gerein, Qualico Developments West Ltd.